Remarks

The following remarks are submitted to be fully responsive to the non-final Official Action dated July 8, 2008. This response is thus timely submitted within the three-month shortened statutory period for response. Should any fees be required, the Commissioner is authorized to charge Kagan Binder Deposit Account No. 50-1775 and thereafter notify us of the same. Reconsideration of all outstanding grounds of the rejection and allowance of the subject application are believed in order and respectfully requested.

By this amendment, independent claim 1 is amended for purposes of clarification as to the functionality of elements of the claimed apparatus. Dependent claims 3, and 8-13 are also amended for consistency and to overcome the section 112, second paragraph, rejection as applied to claim 8. Accordingly, withdrawal of the section 112, second paragraph, rejection is respectfully requested.

It is noted that the Examiner has affirmed the previous restriction requirement and election made by applicants, but has included method claims 16-20 within the prior art rejection of record, discussed below with regard to claims 1-15. Applicants assert that the rejection is improperly applied to claims 16-20. Also, by this response claims 16-20 are canceled without prejudice or disclaimer of the subject matter that is claimed therein.

Claims 1-10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by the Barbut reference (US 5769816). Dependent claims 11, 12, 13 and 15 are not included within the prior art rejection of record and thus are taken as indicated as allowable over the prior art of record. However, it is submitted that independent claim 1 is allowable over the Barbut reference and all prior art of record. The amendments to claim 1 as presented by this response are submitted to further clarify the already claimed distinguishing features of the present invention.

The Barbut reference is directed to a blood cannula that is designed for insertion into the aorta of a patient for supplying blood from outside the patient into the patient's vascular system, such as blood returned to a patient from a blood perfusion system. As such, blood supply flows from the end 350 of the cannula into the aorta without passing through the filter 315 that is positioned and expanded within the aorta behind the supply end 350. The purpose of the filter 315 is to collect embolic material as may be dislodged within the aorta between the heart and the point of incision of the cannula into the aorta (see column 20, lines 21-25). As such, the filter is operative within the blood flow as may occur within the aorta from the heart of the patient. Oxygenated blood is supplied into the aorta from end 350 then downstream from the filter 315.

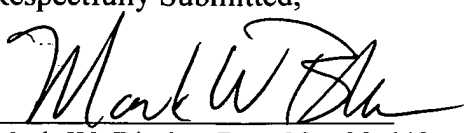
In rejecting claim 1, the Examiner relies on another feature of the cannula of the Barbut reference in reading on the claimed entrapment device. The Examiner notes seal 317, passage 320, passage 312 and syringe 307 as providing an entrapment mechanism. These elements are included within a system of the cannula of the Barbut reference that provide for expanding the chamber 319 and expanding the seal 317 and thus the filter mesh 318 (see column 18, lines 5-20 and column 20, lines 9-20). As such, these elements as relied upon by the Examiner are not provided as having any capability to provide an entrapment function within a blood flow stream along with a blood filter as would occur within a blood vessel, but instead are relied upon as inadvertently reading on the claimed structure.

Claim 1 is currently amended to clarify the nature of the presently claimed invention as an apparatus including both a filter device and an entrapment device as are together provided within a blood vessel to both act within a single flow of liquid (blood) as would occur in a blood vessel. In other words, claim 1 emphasizes that the claimed apparatus has at least a capability to be positioned together within a blood vessel and to functionally create a chamber within a flow of blood that filters debris and entraps the debris even under backflow conditions of the same blood flow. It is submitted that the device of the Barbut reference cannot perform this function and does not have any ability to perform this function. To the extent that the Barbut reference discloses structure that supports the screen material including holding strings 316 as provided prior to the screen with respect to the direction of blood flow in the vessel, such strings 316 act equally to permit blood flow the same in both directions. No structure within the Barbut reference is capable of providing the relationship of structure and function as is presently claimed. Accordingly, allowance of independent claim 1 and dependent claims 2-15 is believed to be proper and is respectfully requested.

As a final note, applicants acknowledge that the subject application is a continuation of parent application serial number 09/896,258, now US patent no. 6,692,513, from which priority has been claimed. The Examiner's indication of consideration of this patent with respect to relevance for double-patenting is requested.

Accordingly, it is submitted that presently pending claims 1-15 are currently in condition for allowance, a notice of which is earnestly solicited. If the Examiner finds any issue remaining after consideration of this response, the Examiner is invited to contact the undersigned, at the Examiner's convenience, in order to expedite any remaining prosecution.

Respectfully Submitted,

By: 

Mark W. Binder, Reg. No. 32,642
Customer Number 33072
Phone: 651-275-9805
Facsimile: 651-351-2954

Dated: 10-8-08

MWB/46092